DEMOCRATS ABROAD

# POSITION PAPER ON FATCA AND HOW TO FIX IT

**What is FATCA?**

The Foreign Accounts Tax Compliance Act (FATCA) was passed in 2010 in response to a growing concern that Americans, mostly living in the US, were using offshore accounts for tax dodging and money laundering. The legislation mandates two things:

- Every American with signatory power over accounts in Foreign Financial Institutions (banks, brokerage houses, etc) that, in aggregate, exceeded certain thresholds ($50,000 in the US and $200,000 abroad) report all such accounts on Form 8938 with their federal tax return. Note that this applies not only to personal accounts but accounts over which the individual controls - but may not own - the funds. (A corporate treasurer or CFO, for example).

- Every Foreign Financial Institution (FFI) must report to the IRS the details of every account held by a US Person. Any FFI that fails to do so faces a withholding of 30% of all funds coming into that bank from US sources.

**The Unintended Consequences of FATCA**

FATCA imposes crippling fines on FFIs who do not demonstrate compliance. This places both a burden and a risk on the bank and the result is inevitable. Banks all over the world are electing to deny financial services to Americans. It is increasingly difficult for an American to open or maintain a bank or brokerage account abroad solely because of their citizenship. More and more banks are asking all customers to certify whether or not they are a US citizen. If the answer is yes, service is often denied and accounts closed.

Ordinary, middle class, law-abiding Americans are suffering solely because they happen to live outside the US. An American living in Toulouse, France, for example, has the same need for financial services as an American living in Pittsburgh. But the denial of basic financial services to Americans living abroad is a serious unintended consequence of FATCA.

Democrats Abroad conducted a survey in June/July 2014 which garnered about 6,500 responses in a matter of weeks. About 16% of respondents reported having an account closed and that percentage is certainly higher now. A one-page summary of the horrifying results of the survey can be found in the appendix.

**A Same Country Safe Harbor for Americans Abroad from FATCA Reporting**

Democrats Abroad, American Citizens Abroad, Association of Americans Residing Abroad and Federation of American Women's Clubs Overseas propose the establishment of **a Same Country Safe Harbor for Americans Abroad from FATCA Reporting.** The Same Country Safe Harbor would require the Treasury to treat the financial accounts in the country in which an American is legally resident the same as an account in the US held by an American resident in the US. For example,

- An American living in, for example, Toulouse, France would not have to file a FATCA report with the details of any accounts he had in France; and
- Any FFI in France that held the account of an American legally resident in France would not be required to report on that account to the IRS (and would not face any penalties for failing to do so).

The US National Taxpayer Advocate has also endorsed the FATCA Same Country Safe Harbor for Americans abroad, as have both Democratic Party candidates for president of the United States.

**The FATCA Safe Harbor is a Win-Win for Americans living abroad, the IRS and Treasury**

The unintended consequences of FATCA on banking abroad would be eliminated for all overseas resident Americans with financial accounts in the country where they legally reside. Our 2014 survey data suggests this might include 85-90% of such Americans abroad.

Congress has made serious cuts to the budget of the IRS over the past few years. IRS Commissioner John Koskinen has publicly expressed his concern that about whether IRS has adequate enforcement resources. Implementation of the Same Country Safe Harbor would cut FATCA data inputs by 85% or more, and leave behind the FATCA filings of those of true interest to the IRS and Treasury.

If the Same Country Safe Harbor were implemented, it would be far easier to find the real targets of FATCA - the tax dodgers, money launderers and other financial crimes perpetrators – who, it stands to reason, do not use financial accounts in their countries of residence to carry out their criminal acts.

**Urgency is key**

There has rarely been an issue that so unites the community of Americans who live and/or work overseas. Everyone would benefit from the adoption of the Same Country Safe Harbor except those for whom the original legislation was intended.

Ideally, like the other organisations representing Americans abroad, Democrats Abroad favors a switch from Citizenship Based Taxation to Residency Based Taxation, which would largely eliminate the problems that FATCA causes overseas Americans. With Congressional and White House attention now focussed on comprehensive tax reform there may be a real opportunity to see this important policy shift enacted. We support our colleague organisations who are working steadily towards the preparation of a Residency Based Taxation model that would make the policy revenue neutral to the federal budget. We expect revenue neutrality would make it possible to insert the legislation into any personal tax reform package that makes its way to a vote in Congress.

Circumstances being what they are, Congress may not succeed in progressing comprehensive tax reform. In the interim, therefore, we will continue to encourage the IRS and Treasury to *urgently* adopt the Same Country Safe Harbor for Americans abroad.

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**Appendix: 2014 FATCA Survey Findings**

The Democrats Abroad 2014 FATCA survey yielded 6,552 responses from Americans living across six continents and hailing from all 50 US states and the District of Columbia.

**Financial account closures:** One in six respondents report having had financial accounts in Foreign Financial Institutions closed due to FATCA. Two-thirds of the accounts reported closed were ordinary checking, savings and retirement accounts - accounts essential for managing everyday personal and household affairs. Over two-thirds (68.0%) of the checking accounts closed had a balance of less than $10,000 when the account was closed, as did 40.4% of the savings accounts. Over half (58.9%) of the investment/brokerage accounts had a value of less than $50,000, as did over two-thirds (69.3%) of the dedicated retirement accounts. This data demonstrates that those impacted by FATCA are overwhelmingly middle class Americans, not high-income individuals.

**Refused new financial services:** Of those who attempted to open a savings or retirement savings account, nearly one-quarter (22.5%) were unable to do so – nearly twice as many as those who attempted to open a checking account (10%). 22.4% of attempts to open investment accounts were unsuccessful. Nearly thirteen percent (12.7%) of all attempts to open an account (of any kind) failed.

**Relationships under stress:** Some 2.4% of respondents with a partner reported changes in their relationship (divorce or separation), while 21% reported that they either no longer have joint accounts or are thinking of moving to separate accounts. Many more noted that the reporting requirements caused stress and conflict between them and their non-American spouse.

**Jobs and Business Partnerships Denied:** The survey data suggests that about one-fifth (19.6%) of overseas Americans are self-employed. Others work in business. The FATCA reporting requirements on accounts on which Americans hold signatory authority has negatively and profoundly affected their ability to own their own businesses and to advance in their profession. 5.6% state that they were denied a position because of FATCA.

In September 2014 Democrats Abroad published a report on the 2014 FATCA Research called "FATCA: Affecting Everyday Americans Every Day." We also published an Executive Summary of the report and a FATCA survey Datapack.

In our discussions with lawmakers about the research findings we saw that there was strong interest in hearing the stories related by survey participants about the ways that FATCA was affecting them. Our survey instrument included a great many free-form fields for participants to elaborate on their responses to questions asked. As a result we have collected thousands of interesting stories, comments and observations. In October a selection of these stories were published in a FATCA "storypack" which will be used in our further discussions with Congress and regulators at the IRS and US Treasury Department.